

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harold Rodriguez	Team: Squad #3	CCRB Case #: 201404954	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 05/12/2014 6:00 PM	Location of Incident: 720 St. Marys Street	Precinct: 40	18 Mo. SOL 11/12/2015	EO SOL 11/12/2015	
Date/Time CV Reported Wed, 05/21/2014 9:43 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 05/21/2014 9:43 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Malachi Mckenith	02680	945983	040 PCT
2. POM Jenze Perez	10492	953237	040 PCT
3. SGT Angel Delgado	05528	930022	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Malachi Mckenith	Abuse: PO Malachi Mckenith entered 720 St. Mary Street, Apartment 2F in the Bronx.	
B.POM Jenze Perez	Abuse: PO Jenze Perez entered 720 St. Mary Street, Apartment 2F in the Bronx.	
C.POM Malachi Mckenith	Force: PO Malachi Mckenith used physical force against § 87(2)(b)	
D.POM Jenze Perez	Force: PO Jenze Perez used physical force against § 87(2)(b)	
E.POM Malachi Mckenith	Abuse: PO Malachi Mckenith damaged § 87(2)(b)'s property.	
F.POM Jenze Perez	Abuse: PO Jenze Perez damaged § 87(2)(b)'s property.	
G.POM Malachi Mckenith	Force: PO Malachi Mckenith used physical force against § 87(2)(b)	
H.POM Jenze Perez	Force: PO Jenze Perez used physical force against § 87(2)(b)	
I.SGT Angel Delgado	Abuse: Sgt Angel Delgado threatened § 87(2)(b) with the use of force.	

Case Summary

On May 12, 2014 Jamie § 87(2)(b) requested that his wife § 87(2)(b) call an ambulance because he was feeling anxious. § 87(2)(b) asked her friend, § 87(2)(b) to make the call and he did. PO Jenze Perez and PO Malachi McKenith of the 40th Precinct arrived at the location without an ambulance. § 87(2)(b) opened the apartment door and both PO Perez and PO McKenith pushed her aside and entered (**Allegations A, B, C and D**). § 87(2)(b) closed the bedroom door and stated that he wanted an ambulance and not officers. Both officers broke down the bedroom door (**Allegations E and F**). § 87(2)(b) was thrown onto the bed and punched more than ten times, causing bruising and lacerations to his head and face (**Allegations G and H**). Sgt. Angel Delgado arrived at the location after § 87(2)(b) was handcuffed, held up a taser to § 87(2)(b) chin and stated, “If you move, I’ll shock you” (**Allegation I**).

Mediation, Civil and Criminal Histories

This case was not eligible for mediation due to the injuries alleged by § 87(2)(b) (Encl. 5G-5Q).

§ 87(2)(b) has not filed a notice of claim with the City of New York and the time to do so has expired. § 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

Civilian and Officer CCRB Histories

This was the first complaints involving § 87(2)(b) and § 87(2)(b) (Encl 3A-C). PO McKenith has been a member of service for seven years and has two substantiated allegations against him for threat of arrest and offensive language (Encl. 2A-B). PO Perez has been a member of service for two years and has no substantiated allegations (Encl. 2C). Sgt. Delgado has been a member of service for twelve years and has three substantiated allegations against him for physical force, retaliatory arrest and a wrongful stop. The NYPD penalty was loss of thirty vacation days. Sgt. Delgado has one threat of force in a previous case which was unsubstantiated (Encl. 2D-F).

NYPD Documents

- 911 Call and Event Information – § 87(2)(b) called 911 and stated that § 87(2)(b) was losing his mind and threatened to kill and throw his wife out of a window. He did not know if there were any weapons involved because he had not gone up to the apartment yet (Encl. 12F-I).
- PO McKenith’s AIDED and Line of Duty Injury Report – PO McKenith’s AIDED report states that he responded to an EDP who became combative. PO McKenith suffered minor cuts and lacerations to his right and left forearms. His Line of Duty Injury Report states that PO McKenith went to § 87(2)(b) Hospital and had lacerations and swelling to his forearms. PO Perez provided a witness statement on the report which was consistent as far as injuries and that § 87(2)(b) was combative (Encl. 12K-Q).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) and § 87(2)(b) provided PO Perez and PO McKenith's names from reading their nameplates on their uniform. Sgt. Delgado was identified through the investigation. The three officers acknowledged their interaction with § 87(2)(b).

Allegations Not Pleaded

Discourtesy – § 87(2)(b) alleged that PO McKenith turned to PO Perez and said, "Did you see what this motherfucker did? He knocked down my yarmulke." This statement was made in a conversation between two officers and was not said to § 87(2)(b) or § 87(2)(b). Neither § 87(2)(b) nor § 87(2)(b) heard this comment. Since the comment was between the officers and the conversation was not directed at the civilians, an allegation of discourtesy was not pleaded.

Allegation A - Abuse of Authority: PO Malachi McKenith entered 720 St. Marys Street, Apartment 4F in the Bronx.

Allegation B – Abuse of Authority: PO Jenze Perez entered 720 St. Marys Street, Apartment 4F in the Bronx.

§ 87(2)(b) stated that he told his wife to call 911 because he was not feeling well and wanted an ambulance to take him to § 87(2)(b) Hospital. § 87(2)(b) was consistent with § 87(2)(b) statement and she asked her friend § 87(2)(b) to make the call. § 87(2)(b) stated that he told the 911 operator that § 87(2)(b) was going through trauma but that he was calm and relaxed. PO McKenith and PO Perez arrived and were greeted at the door by § 87(2)(b) and § 87(2)(b) were consistent in stating that § 87(2)(b) opened the door and let the officers come in to the apartment without objection. § 87(2)(b) stated that she opened the door and was pushed aside by both PO McKenith and PO Perez with their forearms.

§ 87(2)(b) yelled that he did not want the police and wanted an ambulance instead. § 87(2)(b) and § 87(2)(b) admitted that he went into the bedroom, closed the door and held it shut. PO Perez and PO McKenith broke the door off its hinges and proceeded into the bedroom. They threw § 87(2)(b) on the bed and caused it to break as well. § 87(2)(b) then stated that he was punched several times on the head but could not see which officer did it. He was informed later that it was PO Perez. § 87(2)(b) and § 87(2)(b) stated that both PO Perez and PO McKenith punched § 87(2)(b) and § 87(2)(b) were consistent that § 87(2)(b) did not resist or fight back and were in the bedroom to witness it.

Upon review of the 911 call (Encl. 7A), § 87(2)(b) told the operator that § 87(2)(b) was losing his mind and threatened to kill § 87(2)(b) and throw her out of the window. § 87(2)(b) medical records stated that § 87(2)(b) tested positive for cocaine and barbiturates and was diagnosed with a cocaine induced mood disorder (Encl. 11A). § 87(2)(b) stated that during his CCRB interview that he generally only smokes marijuana every thirty minutes but does not do cocaine.

PO McKenith and PO Perez both stated that they received a radio run for a violent EDP but did not recall further details. Upon arrival, § 87(2)(b) pointed out that § 87(2)(b) was in the apartment and let them in. She did not object to them being in the apartment. PO McKenith stated that § 87(2)(b) stood next to him and he did not push her to get past her. He did not know if PO Perez pushed her. PO Perez stated that neither he nor PO McKenith pushed § 87(2)(b) aside.

PO McKenith and PO Perez stated that § 87(2)(b) yelled and cursed at them when he saw them and demanded an ambulance instead. PO McKenith's AIDED and Line of Duty Injury Report

also noted that § 87(2)(b) became combative when officers arrived and resulted in the PO McKenith being injured (Encl. 12K-Q).

PO McKenith and PO Perez were inconsistent when it came to § 87(2)(b) door. According to PO McKenith, § 87(2)(b) pressed against the door and when he stopped, PO McKenith and PO Perez both pushed on the door and the door broke off the hinges. PO Perez stated that the door was not broken and that they were able to walk in to the room.

PO McKenith stated that as soon as he got through the door, § 87(2)(b) punched him on the top of the head several times and knocked off his yarmulke. He stated that § 87(2)(b) also tried to bite his forearm. PO McKenith admitted to punching § 87(2)(b) on the top of the head in his defense and to prevent him from biting his forearm. He stated that PO Perez also struck § 87(2)(b). PO Perez stated that § 87(2)(b) did punch PO McKenith but denied that either of them struck § 87(2)(b) in return. Both officers denied that the bed broke upon trying to handcuff § 87(2)(b). PO McKenith suffered scratches and lacerations to his forearms as a result of the struggle with § 87(2)(b).

Police officers can make a warrantless entry into an apartment if they have reasonable grounds to believe that an emergency is at hand, there is an immediate need for assistance of life and/or property, and a reasonable basis to associate the emergency with the premises that are entered, *People v. Greenleaf*, 634 N.Y.2d 892 (1995), (Encl. 1A-B).

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation C – Force: PO Malachi McKenith used physical force against § 87(2)(b)

Allegation D – Force: PO Jenze Perez used physical force against § 87(2)(b)

Allegation E – Abuse of Authority: PO Malachi McKenith damaged § 87(2)(b) property.

Allegation F – Abuse of Authority: PO Jenze Perez damaged § 87(2)(b) property.

Allegation G – Force: PO Malachi McKenith used physical force against § 87(2)(b)

Allegation H – Force: PO Jenze Perez used physical force against § 87(2)(b)

§ 87(2)(b) and the two officers stated that § 87(2)(b) allowed them into the apartment. § 87(2)(b) and § 87(2)(b) did not mention § 87(2)(b) being pushed aside and the officers denied the action. § 87(2)(b), § 87(2)(g)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
§ 87(2)(b) and the officers were consistent that § 87(2)(b) held the bedroom door shut. § 87(2)(b), § 87(2)(g)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

According to Patrol Guide Procedure 103-11, officers may use a minimum amount of force necessary to subdue an individual or emotionally disturbed person (Encl. 1C-D).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation I – Abuse of Authority: Sgt. Angel Delgado threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged in his CCRB statement that Sgt. Delgado pulled out his taser and held it up to his chin after he was in handcuffs. Sgt. Delgado then stated, “If you move, I’ll shock you.” By this time, PO McKenith, PO Perez, § 87(2)(b) and § 87(2)(b) had exited the apartment. There were no other witnesses to this statement.

Sgt. Delgado stated that he did not take out his taser at any moment during the incident and did not hold it up to § 87(2)(b) chin and did not make the above statement.

§ 87(2)(b), § 87(2)(g)

[REDACTED].

Team:

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date